REMARKS/ARGUMENTS

Claims 1-18 and 20-54 are pending. Claims 6-18 and 42-54 are allowed. Claims 4-5, 22, 24, 26-37 and 40-41 are indicated to contain allowable subject matter but are objected to on other grounds.

The Examiner objected to the title as not being descriptive, and indicated that it "need[s] to incorporate probability of availab[ility] of resources at future point in time." In response, applicant has amended the title to correspond with the Examiner's wishes. Applicant therefore requests that the objection to the title as amended be withdrawn.

The Examiner objected to claim 25 for depending upon itself. In response, applicant has amended the dependency of claim 25. Applicant therefore requests that the objection to claim 25 as amended be withdrawn.

The Examiner rejected claims 1 and 22 on the ground of nonstatutory double patenting over claim 20 of U.S. patent no. 7,095,841. This rejection is respectfully traversed.

As is explicitly stated in U.S. patent no. 7,095,841, the present application describes how to compute the expected value E_A of agent arrivals (col. 5, lines 40-46), which is a portion of the computation of the first central moment (col. 5, lines 24-27). "Determining moments" is only one step of the invention claimed in claim 20 of the patent. Other element of claim 20 of the patent, such as adjusting the moments, determining a binomial distribution, fitting the adjusted moments to a linear combination of binomial distributions to obtain a composite binomial distribution, and evaluating the composite binomial distribution, are not disclosed, taught, suggested, or claimed in the present application. Nor are these claim elements disclosed, taught, or suggested in the Hammond prior-art reference.

Furthermore, neither "determining moments" – the element of claim 20 of the patent that is disclosed in part by the present application – nor

the portion of "determining moments" that is disclosed and claimed in the present application, is claimed as an invention in the patent. Conversely, no invention claimed in the patent is also claimed in the present application.

Consequently, it should be evident that the patent and claims 1 and 20 of the present invention claim distinct inventions that are not obvious one in view of the other. Therefore, the nonstatutory double patenting rejection of claims 1 and 20 is unfounded, and applicant requests that this rejection be withdrawn.

The Examiner next rejected claims 21-37 under 35 U.S.C. §101 as directed to non-statutory subject matter because they do not claim computer hardware required for software execution. In response, applicant has amended independent claim 21, and independent claim 22 from which claims 23-37 depend, to explicitly recite computer means. Applicant therefore requests that the Section 101 rejection of his claims as amended be withdrawn.

The Examiner also rejected claims 1-5, 20-21, 23-25, and 38-41 under 35 U.S.C. §112, second paragraph, for indefiniteness. In response, applicant has amended the claims to cure the alleged deficiencies identified by the Examiner. However, applicant respectfully traverses the rejection of claims 1, 20, and 21 for not specifying what is the base for determining the probability of availability of each one of the resources. The claim is intended to cover determining the probabilities irrespective of the base. Lack of this detail does not make the claim indefinite or unclear, it merely makes it broad. Unless and until the Examiner shows that the prior art requires applicant to limit the scope of his claim to a particular base, applicant respectfully declines to do so.

In view of the amendments and these remarks, applicant requests that the Section 112, second paragraph, rejection of claims 1-5, 20-21, 23-25, and 38-41 as amended be withdrawn.

Finally, the Examiner rejected claims 1-3, 20-21, 23, 25, and 38-39 under 35 U.S.C. §102(e) over U.S. patent no. RE 37,073 (Hammond). This rejection is respectfully traversed.

Hammond discloses a controller that schedules incoming calls that cannot be immediately answered, for a callback time. As a part of its operation, the controller determines (predicts on a statistical basis) the time when a resource will be available to handle the callback. The closest that Hammond comes to disclosing how this determination is made is when he states that "the time of callback can be predictively generated based on the known or calculated time of availability, such as a scheduled return from a maintenance down time of certain resources, or such as the arrival time of human attendants, or such as the anticipated end of a peak call-in period" (col. 5, lines 21-26). Hammond does not disclose further information on how that prediction of resource availability can be made. In contrast, applicant claims determining the probability of availability of each one of a plurality of resources at a future point in time, combining those probabilities to obtain a number, and using the number to schedule new tasks for that future point. There is no corresponding disclosure, teaching, or suggestion in Hammond. Hammond does not in any way, shape, or form, disclose or even imply determining the individual probabilities of availability of individual resources and then combining those probabilities. Nor does the general skill of the art provide such an implication. For example, Hammond's determination could be made statistically for an undifferentiated set of a plurality of resources as a whole, instead of computing the probabilities for individual resources and then combining them.

Consequently, there is no basis for asserting that Hammond anticipates applicant's claimed invention. The Section 102(e) rejection of claims 1-3, 20-21, 23, 25, and 38-39 is therefore unfounded, and applicant requests that it be withdrawn.
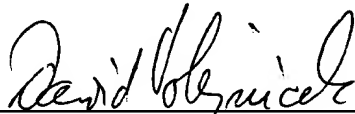
The Examiner's objections and rejections having been properly addressed and overcome, applicant suggests that the application is now in condition for allowance. Applicant therefore requests that the application be reconsidered and thereafter be passed to issue.

Applicant believes that the foregoing is dispositive of all issues in the application. But, if the Examiner should deem that a telephone interview would advance the prosecution, applicant requests the Examiner to call applicant's attorney at the telephone number listed below.

Respectfully submitted,

David C. Mullen

By _____

David Volejnicek
Corporate Counsel
Reg. No. 29355
303-538-4154

Date: 09 Nov. 2006

Avaya Inc.
Docket Administrator
307 Middletown-Lincroft Road
Room 1N-391
Lincroft, NJ 07738